

RESOLUTION NO. R2020-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING SECTION 2.14 SUBSTANCE ABUSE OF THE PERSONNEL POLICY MANUAL BY UPDATING AND CLARIFYING POLICY REQUIREMENTS.

Whereas, the City Council believes its personnel policies should reflect the needs of the City and meet all applicable state and federal labor laws; and

Whereas, it is necessary to update, revise, and clarify language in the City of Burnet Personnel Policies consistent with laws, regulations, and industry standard practices; and

Whereas, the City of Burnet has previously adopted Ordinance No. 2009-31, Personnel Policy Manual on December 8, 2009; and

Whereas, the Personnel Policy Manual was last revised on April 28, 2020; and

Whereas, the City Council believes it is in the best interest of the City and its employees to make additional amendments to said Personnel Policy Manual; and

Whereas, The City Council has reviewed the proposed amendments to the Personnel Policy Manual and has determined the need to update and clarify those sections.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section 1. The City Council hereby accepts and adopts the amendment to the Personnel Policy to include sections 2.14. Drug and Alcohol Use Policy (NON-DOT) and 2.15. Drug and Alcohol Policy for DOT Employees (formally titled 2.14 Substance Abuse) as attached hereto as Exhibit "A" with an effective date of May 26, 2020.

Section 2. The findings and recitations set out herein above are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 3. If any provision of this resolution or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

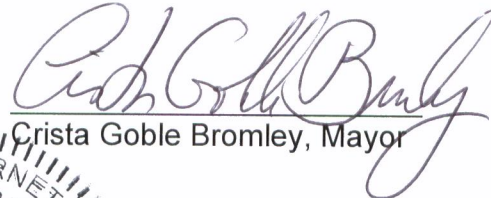
Section 4. That it is hereby officially found and determined that the meeting at which this resolution is passed was open to the public as required and that public notice

of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this 26th day of May 2020.

CITY OF BURNET, TEXAS

ATTEST:


Crista Goble Bromley, Mayor

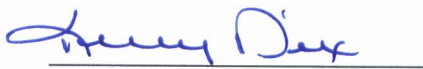

Kelly Dix, City Secretary



Exhibit A

Current Policy

2.14 SUBSTANCE ABUSE

1. DEFINITIONS:

Alcohol means any beverage that contains ethyl alcohol (ethanol), including but not limited to beer, wine and distilled spirits.

City Owned Vehicle (COV) is any vehicle or equipment owned or leased by the City of Burnet.

City property or city facilities means all property of the City including, but not limited to, the offices, facilities and surrounding areas on the City-owned or City-leased property, parking lots, and storage areas. The term also includes the City-owned or City-leased vehicles and equipment wherever located.

Contraband means any article, the possession of which on the City premises or while on the City business, causes an employee to be in violation of the City work rule or law. Contraband includes illegal controlled substances and alcoholic beverages, drug paraphernalia, lethal weapons, firearms, explosives, incendiaries, stolen property, counterfeit money, and pornographic materials.

Controlled substance (illegal drug, or drug abuse) means a drug or substance which the use, possession, sale, transfer, attempted sale or transfer, manufacture or storage if it is illegal under any federal, state, or local law or regulation without permit or prescription and includes, but is not limited to inhalants, marijuana, cocaine, narcotics, opiates, opium derivatives, hallucinogens and any other substance having either a stimulant, depressant or hallucinogenic effect on the central nervous system such as amphetamines, barbiturates, lysergic acid or diethylamide.

Drug testing means the scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens of the human body for the purpose of detecting a drug or alcohol.

Impairment is defined as being unable to perform their duties safely and competently due to the use or presence of alcohol or other substances.

Legal drug means any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which prescribed or manufactured.

Illegal use of a legal drug shall mean any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level other than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy (herein "illegal drug").

Reasonable belief (reasonable suspicion) means a belief based on objective facts sufficient to lead a prudent person to conclude that a particular employee is unable to satisfactorily perform his or her job duties due to drug or alcohol impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.

Regulated drivers (or herein "drivers") means those drivers who are subject to the U.S. Department of Transportation regulations as defined by the DOT. Applicable regulations include but are not limited to DOT, Federal Highway Administration and Federal Motor Carrier Safety Administration regulations.

Safety sensitive function means a full-time, part-time, or temporary position with the City requiring any activity that presents a threat to the health or safety of the employee, other city employees, or the public. An employee is considered to be performing a safety-sensitive function during any period in which (s)he is actually performing, is ready to perform, has just completed performing, or is immediately available to perform any safety-sensitive function. These may include but are not limited to:

- All time waiting to be dispatched to drive a COV or equipment.
- All time inspecting or servicing a COV or equipment.
- All time spent driving a COV or equipment.
- All time, other than driving time, spent on or in a COV or equipment.
- All time loading or unloading a COV or equipment.
- All time repairing or remaining in attendance upon a disabled COV or equipment.
- Any activity that places the employee or others in jeopardy.

Substance Abuse Professional (SAP) means a licensed physician (MD or DO), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (NAACACCC certified) with knowledge of an clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

Under the influence means a condition in which a person is affected by the voluntary introduction of any amount of a controlled substance or alcohol at/or above the limit as set by the U.S. Department of Transportation in the Omnibus Transportation Employee Testing Act of 1991.

B. GENERAL

I. Purpose: It is the policy of the City of Burnet to maintain a work environment free from the use, possession, and effect of the illegal use of controlled substances. The City of Burnet recognizes that drugs and alcohol may impair employee judgment, which may result in increased safety risks, hazards to the public, employee injuries, faulty decision-making, and reduced productivity. Therefore, the City of Burnet expects all employees to be in a state of mind and physical condition fit to complete their assigned duties safely and competently during working hours.

II. Pre-Placement: In order to maintain a safe and drug free environment for its employees, the City of Burnet will not knowingly hire applicants who engage in substance abuse. Please refer to Chapter 11, Subsection 11.02 for information regarding this policy.

III. Current Employees: The following conduct by employees of the City is prohibited and will result in appropriate action by the City.

(a) Controlled Substances and Alcohol. Committing any of the prohibited acts listed below constitutes serious misconduct not requiring any previous disciplinary actions and will result in immediate removal from the work place where applicable, and termination from employment when such activities occur while on City property, in City supplied vehicles, during working hours or at any time while the employee is on a City work site or while representing the City on official City business.

- (1) The sale, manufacture, dispensation, possession, distribution, or being under the influence of an illegal controlled substances or drug paraphernalia by an employee.
- (2) The sale, manufacture, dispensation, unlawful possession, distribution or abuse of legal drugs.
- (3) Being under the influence of alcohol not in a social setting.
- (4) The prohibition against possession shall not apply to paraphernalia or drugs held as evidence under authority of the Chief of Police.

Any employee who is arrested for a drug related crime under a criminal drug statute for violations occurring on or off City property must immediately report the arrest to their supervisor. Failure to report the arrest will result in disciplinary action.

All employees who are using a legal drug which may in any way impact or impair their job performance must notify their supervisor in writing as to the possible effects of such medication on the performance of their assigned duties and related physical capability. The Department Director may require a doctor's statement if the employee indicates that

there is a need to use the prescription for an extended period or if the employee's performance is or can be impaired. (See medical exception below).

IV. Medical Exception: Exceptions to this chapter may be made for employees who are reasonably suspected of being under the influence and impaired by medication taken according to a prescription in the employee's name obtained from a licensed physician for medical purposes. Such individuals may be placed in an assignment consistent with their ability to perform the assigned task or will be removed from the workplace and be allowed to use their accumulated sick or vacation leave until they are able to return to work.

V. Reasonable Suspicion Tests: The City may conduct unannounced searches or inspections where there is reasonable suspicion of being under the influence of alcohol or controlled substances. These may include, but are not limited to, employee personal effects including requiring the employee to empty the contents of pockets, lunchboxes, purses, briefcases, containers, and desks located on City property, in work sites, and in City owned vehicles. A supervisor who has reasonable suspicion of possession of a controlled substance or illegal contraband in an employee's private vehicle on City property should first obtain a written consent to search. Should the individual in control of the vehicle refuse to give his consent to search, the Burnet Police Department may be contacted to obtain a search warrant.

When a department supervisor has reason to believe that an employee at work, or when reporting to work, appears to be impaired from alcohol or drugs, the supervisor shall notify his/her department head, the Director of Personnel, or the City Manager or his/her designee for confirmation of testing. The employee will be required to take a drug/alcohol test. Observations which constitute a factual basis for determining reasonable suspicion may include, but are not limited to:

- Odor of alcoholic beverages
- Erratic behavior
- Violent mood swings
- A medical emergency that can be attributed to drug use
- Physical on-the-job evidence of drug use
- Documented deterioration in the employee's job performance, or an accident which is caused by the apparent action or interaction of the employee
- Other reasonable indication of alcohol use.

The department supervisor will describe the incident in writing, documenting the circumstances leading to the conclusion that a drug or alcohol test is necessary. Such documentation will include the date, time, place, description of incident, and statement of witnesses. Any other evidence such as drugs, drug paraphernalia, containers, etc., will be collected. After documenting the incident, the department supervisor will contact the City Manager, or his designee, to determine if drug testing is appropriate and to arrange for testing.

If drug testing is appropriate, the designated City personnel will transport the employee to the drug specimen collection facility. The type of drug/alcohol test may be based on urine, blood, or other type of sample as appropriate. After testing, the employee will be transported home by the supervisor or by a relative. The employee shall not return to work until the results of the test are known. If the employee is incapacitated, in need of immediate medical attention, or if, in the opinion of the supervisor, poses a threat to himself or others, the police department and/or the Fire/EMS will be summoned.

VI. Random Test - Safety sensitive personnel are subject to random drug/alcohol testing in order to prevent drug and alcohol abuse while on duty. Names will be drawn in accordance with state, local and federal law. Employees on previously approved leave are not required to return to work for testing. Employees will be taken to the drug testing sample collection facility to give urine, blood, or another appropriate sample. Employees are required to sign a consent form (aka Chain of Custody Form). Refusal to sign the consent form will be considered insubordination subject to immediate termination.

VII. Post-Accident Test – After any on-the-job accident where more than minor first aid is required, employees involved shall be tested for controlled substances. In accidents involving City Owned Vehicle(s), the employee(s) involved shall be tested for controlled substances. Employee(s) must submit a sample within two (2) hours of the accident or incident.

VIII. Refusal to Submit - If an employee refuses to submit to the testing that is outlined in this policy statement or engages in conduct that clearly obstructs the testing process, such refusal or obstruction, shall be considered as a insubordination subject to immediate termination. If an employee fails to provide an adequate breath or urine sample when required to do so and a physician cannot determine a valid medical reason why such samples cannot be provided, the employee will have refused to submit to required testing.

IX. Withholding Information – Employees who knowingly withhold personal knowledge that another employee is impaired on the job is subject to disciplinary action.

X. Switching or Altering Samples – Switching or altering samples is strictly prohibited and the employee shall be considered as insubordination subject to immediate termination. Any employee facilitating, directing, or aiding in this behavior is also subject to disciplinary action.

XI. Consequences of testing positive –If an employee fails a controlled substance or alcohol test, the employee shall be immediately terminated. Disciplinary action based on a violation of this drug and alcohol policy is not suspended by an employee's participation in an abuse program after a confirmation the employee has been under the influence of drugs or alcohol while on duty.

An employee who is terminated for failing a substance or alcohol test is not eligible for rehire until one year has passed and they can demonstrate that they have completed an

Employee Assistance Program (EAP) equal in scope and gravity to the SAP Return to Duty Program noted in *Section C.III.(f)* below. The city is not responsible for any costs associated with the EAP process. The City is under no obligation to rehire any employee after termination for violation of this policy. Rehires under this section will be subject to regular and periodic testing in accordance with this policy, and federal and state law.

C. COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL REQUIREMENTS:

I. Policy: The City of Burnet will comply with the Federal Highway Administration and Department of Transportation rules requiring drivers who drive COVs to submit to drug and alcohol testing where applicable. In compliance with these rules, Regulated Drivers must also submit to the Federal Highway Administration's drug and alcohol testing guidelines. Regulated Drivers are those who fall within the following criteria:

- ALL DRIVERS OF VEHICLES WITH GROSS COMBINED WEIGHT RATING OVER 26,000 POUNDS.
- ALL DRIVERS OF VEHICLES DESIGNED TO CARRY OVER 15 PASSENGERS.
- ALL DRIVERS TRANSPORTING HAZARDOUS MATERIALS.
- SAFETY SENSITIVE PERSONNEL
- FIRE/EMS AND POLICE PERSONNEL

The City expects drivers that drive COV's to report to work ready to drive motor vehicles at any point during their workday. This includes drivers that are expected to backup or substitute for a driver in his/her absence. Therefore, the City expects all drivers to be capable of performing the safety-sensitive function of driving a motor vehicle when they report to work. Such drivers will continue to be expected to drive vehicles until their workday is over.

Because drivers can be expected to drive at any time during their workday, they are also subject to testing at any time during the shift as prescribed by this policy statement.

II. Controlled Substances:

a) Prohibited conduct:

Drivers may not report for duty or remain on duty when they are under the influence, use, or possess any controlled substance, except when a physician has prescribed a substance and has advised the driver, in writing, that it will not affect his/her ability to operate a commercial motor vehicle safely. Also, drivers are prohibited from using or being under the influence of any other substance that renders the driver incapable of safely operating a motor vehicle.

b) Circumstances for testing:

Pre-Employment

Prior to the first time that a driver operates a COV, that driver must be tested for alcohol and controlled substances. Other employees that transfer into a position that requires a commercial driver's license, must also be tested as well.

Post-Accident

After any on-the-job accident where more than minor first aid is required, or any accident involving the use of City owned equipment or vehicle(s), the employee(s) involved shall be tested for controlled substances. Employee(s) must submit a sample within two (2) hours of the accident or incident. After a vehicle accident, all injured parties, including the driver, should receive the appropriate medical treatment as soon as possible. If a driver is physically capable of reporting an accident, (s)he should do so as soon as possible.

Random

The City of Burnet will comply with the Federal Highway Administration's random testing requirements for Regulated Drivers which dictates that random drug tests will take place at least quarterly at the rate of at least fifty percent (50%) of the average number of Commercial Driver positions annually. For instance, if there are six (6) regulated drivers, three (3) or more drivers will be selected for random drug testing each year.

Drivers should understand that if (s)he was selected for a random test during one test period, (s)he is just as likely to be tested during the next test period. It is conceivable that out of eight (8) drivers, one driver, the same driver, would be selected four (4) times in a year to be tested, and the other drivers would not be selected at all.

Drivers as a condition of the position required to drive COV's and do actually drive COV's are subject to random testing in order to prevent drug and alcohol abuse while on duty. Employees will be asked to sign consent forms and will be taken to the drug testing sample collection facility to give urine, blood, or another appropriate sample. Refusal to sign the substance abuse consent form will be considered as insubordination subject to immediate termination.

Reasonable Suspicion

If there is reasonable suspicion that a driver has violated the alcohol or controlled substance rules, the driver must be tested. A supervisor charged with making a "reasonable suspicion" must base the determination on specific observations concerning the appearance, behavior, speech, or body odors of the driver. *Such suspicion should be based only on what is observed during, just preceding, or just after the period of the workday that a commercial driver is performing driving functions.*

The Federal Highway Administration rules require that supervisors make a written and signed record of their observations on which they based their reasonable suspicion for

controlled substances. This written record must be made within twenty-four (24) hours of the observations and before the release of the controlled substance results.

If the employer does not perform testing for controlled substances within thirty-two (32) hours of determining that a reasonable suspicion exists, the employer shall prepare and maintain a file on why such testing was not properly administered.

c) Testing procedures:

When the driver is told that (s)he has been selected for testing as required by the DOT and the Federal Highway Administration and described in the policy statement, the driver will be driven to the collection site. The driver shall carry an identification card with his/her photograph so (s)he can be positively identified.

The collection site personnel will initiate the chain of custody form, which is required by the Federal Highway Administration. The driver will be required to urinate the required amount called for under the Federal Highway Administration rules. The collection site personnel will receive the urine sample from the driver, and, in the presence of the driver, place the required amount of the sample in two (2) containers, again in the presence of the driver with a copy of the chain of custody form that will be sent along with the sample to the designated lab.

In the event the driver cannot produce a sample within two (2) hours, (s)he will be examined by a physician to determine if there is a medical reason why a sample cannot be obtained. If no medical reason exists, the failure to produce a specimen will be considered a refusal to submit to testing.

The driver's sample will be sent in its sealed container to a testing laboratory that has been approved by the Department of Health and Human Services.

If a sample initially tests positive, the lab must verify this positive test by using a testing procedure of greater accuracy or reliability where available. If the initial test is the most accurate available that test shall be repeated.

If a sample tests positive, a medical review officer will interview and/or examine the driver to determine if there is a reason for a positive test. If there is a valid medical reason for the positive result, the City will not be informed of the positive test result. However, if there is not a valid medical reason, the positive result will be reported.

Consequences of testing positive:

If a driver fails a controlled substance or alcohol test, or the driver violates the Federal Highway Administration alcohol or controlled substance rules and regulations as outlined in this policy statement, the driver will be immediately terminated.

A regulated driver who is terminated for failing a substance or alcohol test is not eligible for rehire until they can demonstrate that they have received an evaluation by a Substance Abuse Professional (SAP) and have completed the return to duty process

recommended by the SAP. The city is not responsible for any costs associated with the SAP process. The City is under no obligation to rehire any employee after termination for violation of this policy. Rehires under this section will be subject to regular and periodic testing in accordance with federal and state law.

Refusal to test shall be considered as insubordination and subject to immediate termination.

III. Alcohol:

a) Prohibited Conduct:

The following are prohibited uses of alcohol.

- Use of alcohol on the job or while on-call
- Use during the four (4) hours before the performance of a safety-sensitive functions.
- Being under the influence of alcohol while performing safety-sensitive functions.
- Use of alcohol within eight (8) hours following an accident involving a covered employee or until the covered employee undergoes a post-accident test (whichever comes first).
- Refusal to submit to a required test.

b) Circumstances for testing:

Post-Accident

After a vehicle accident, all injured parties, including the COV driver, should receive the appropriate medical treatment as soon as possible. If a driver is physically capable of reporting an accident, (s)he should do so as soon as possible. *If the driver was driving a COV* at the time of an accident, there were injuries or a fatality as a result of the accident, regardless if any citations were issued, the driver will be tested for the presence of alcohol. Accidents involving the use of City owned equipment shall also require the employee(s) involved be tested for alcohol.

Random

The City of Burnet will comply with Federal Highway Administration's random testing requirements for regulated drivers which dictate that random tests will take place at least quarterly at a rate of at least twenty-five percent (25%) of the average number of driver positions annually. Regulated drivers should understand that if (s)he was selected for a random test during one test period, (s)he is just as likely to be tested during the next test period. It is conceivable that out of eight (8) drivers, one driver, the same driver, would be selected four (4) times in a year to be tested, and the other drivers would not be selected at all.

Drivers of all non-regulated COV's are subject to random testing in order to prevent drug and alcohol abuse while on duty. Employees will be asked to sign consent forms and will

either be taken to the drug testing sample collection facility to give urine, blood, or other appropriate sample or asked to report to the location. Refusal to sign the substance abuse consent form may result in termination. If in the event a second test is required and the second test is also positive, the employee will be terminated immediately.

Reasonable Suspicion

If there is a reasonable suspicion that a COV driver has violated alcohol rules, the driver must be tested. A supervisor charged with making a "reasonable suspicion" must base his determination on specific observations concerning the appearance, behavior, speech, or body odors of the driver. Such suspicion should be based only on what is observed during, just preceding, or just after the period of the workday that a COV driver is performing safety-sensitive functions.

The Federal Highway Administration rules require that supervisors make a written and signed record of their observations on which they based their reasonable suspicion for alcohol. This written record must be made within twenty-four (24) hours of the observations and before the release of the alcohol test results.

If the employer does not request the testing within two (2) hours of determining a reasonable suspicion exists, the employer shall prepare and maintain a file on why such testing was not promptly administered. If the test is not administered within eight (8) hours, the supervisor shall cease attempts to administer the test, and prepare and maintain a written record described above.

c) Testing procedures:

For alcohol testing, the current testing rate is twenty-five percent (25%). The City of Burnet may test at a higher percentage in order to protect the safety of employees and the community.

Federal Highway Administration rules dictate that a driver may only be randomly tested for alcohol while performing, just before or just after performing safety-sensitive functions, or just before or after performing these functions. The City of Burnet will randomly test for alcohol in compliance with these rules.

Similar to the testing procedure for controlled substances, when a driver has been told (s)he has been selected for random alcohol test, as required by Federal Highway Administration rules described in the policy statement, the driver will be taken to the testing site. The driver shall carry an identification card with him/her so that (s)he can be positively identified.

When a driver is to be tested for the presence of alcohol in the system, (s)he will be required to be tested by a method approved by the Federal Highway Administration. Only those persons who have received training as a Breath Alcohol Technician will administer and monitor such breath alcohol tests.

In the event a Breath Analyzer Test is used, the Breath Analyzer Technician will review the procedure to be used for administering the breath tests. The driver will be allowed, and is encouraged, to watch as the Evidential Breath Analyzer is prepared for the test. The machine will perform a self-diagnosis. The Breath Analyzer Technician will provide a new mouthpiece for the test, which will be enclosed in a plastic wrapper and be unwrapped in the driver's presence. The driver will then be expected to blow forcefully into the mouthpiece attached to the tube leading to the Evidential Breath Analyzer. Within a few minutes, the Evidential Breath Analyzer will produce the results of the alcohol analysis of the driver's breath. These results will be presented to the driver. If the driver is unable to provide an adequate amount of breath, (s)he will be examined by a physician to determine if there is a medical reason why a sample cannot be obtained.

In the event that the driver's breath tests greater than .02 alcohol level, a second confirming test will be conducted. While waiting for the confirming test, which will take place no sooner than fifteen (15) minutes and no later than twenty (20) minutes after the initial test, the driver should follow the instructions of the Breath Analyzer Technician and should refrain from putting anything in his/her mouth. At the completion of the confirming test, if the driver registers below .02 alcohol level, the driver's results will be reported as negative. If the confirming test shows an alcohol level greater than .02, the driver will not be permitted to drive. The driver should not drive away from the testing site, his/her supervisor will arrange for transportation back from the testing site and the driver will be placed on leave without pay before disciplinary action is administered.

d) Refusal to submit:

If a driver refuses to submit to the Federal Highway Administration alcohol and controlled substance testing that are outlined in this policy statement or engages in conduct that clearly obstructs the testing process, the driver will have refused to submit to Federal Highway Administration required testing.

If a driver fails to provide an adequate breath or urine sample when required to do so under the Federal Highway Administration rules outlined in this policy statement and a physician cannot determine a valid medical reason why such samples cannot be provided, the driver will have refused to submit to required testing.

When a driver refuses to submit to Federal Highway Administration alcohol or drug testing, (s)he will be immediately terminated.

NOTE: A driver that refuses to submit to a post-accident test following a fatal accident is subject to Federal Highway Administration disqualification to drive commercial motor vehicles for one (1) year.

e) Withholding Information – Employees who knowingly withhold personal knowledge that another employee is impaired on the job is subject to disciplinary action.

f) Consequences of testing positive:

If a driver fails a controlled substance or alcohol test, the driver violates the Federal Highway Administration alcohol or controlled substance rules, as outlined in this policy statement, and the driver will be immediately terminated.

A regulated driver who is terminated for failing a substance or alcohol test is not eligible for rehire for one year and must be able to demonstrate that they have received an evaluation by a Substance Abuse Professional (SAP) and have completed the Return to Duty Process recommended by the SAP. The city is not responsible for any costs associated with the SAP process. The City is under no obligation to rehire any employee after termination for violation of this policy. Rehires under this section will be subject to regular and periodic testing in accordance with this policy, and federal and state law.

Refusal to test shall be considered as insubordination subject to immediate termination.

IV. Medical Exception: Exceptions to this chapter will be made for employees who are reasonably suspected of being under the influence and impaired by medication taken according to a prescription in the employee's name obtained from a licensed physician for medical purposes. Such individuals may be placed in an assignment consistent with their ability to perform the assigned task or will be removed from the workplace and be allowed to use their accumulated sick or vacation leave until they are able to return to work.

Exhibit A Proposed Policy

DRUG AND ALCOHOL USE POLICY (NON-DOT) (Revised 5-26-2020 Resolution 2020-**)

It is the desire of the City to provide an alcohol and drug-free, healthful, and safe workplace. To promote this goal, employees are required to report to work in appropriate mental and physical condition to perform their jobs in a satisfactory and safe manner.

Prohibition Against Alcohol and Illegal and Unauthorized Drugs. While on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment, no employee may use, possess, distribute, sell, or be under the influence of alcohol (except under the limited circumstances described below), inhalants, illegal drugs, including drugs which are legally obtainable but which were not legally obtained, and prescribed or over-the-counter drugs which are not being used as prescribed or as intended by the manufacturer.

The use of alcohol by a City employee during a business lunch is prohibited even though the person with whom the employee is having lunch may be consuming alcohol. Further, an employee on duty or conducting City business, including City-related business entertainment, may not drive his or her own personal vehicle while under the influence of alcohol. No employee in his or her work-related capacity should ever be impaired because of the excessive use of alcohol. City employees, while on duty, may not bring alcoholic beverages on City premises, and may not store or transport alcohol in a City-owned or leased vehicle. If an employee receives a gift of alcohol (example – recognition for retirement, birthday, holiday) they will not be in violation of this policy if the gift remains unopened and is taken off premises at the end of the employee's shift.

Employees attending training and conferences may participate in social functions associated with the conference. This includes the consumption of alcohol, so long as the employee's conduct does not reflect adversely upon the City. Employees who consume alcohol at these functions will not operate a City owned or rented vehicle.

Prohibition Against Illegal and Unauthorized Drug-Related Paraphernalia. This policy also prohibits the use, possession, distribution and sale of drug-related paraphernalia while on City premises, while on duty, while conducting City-related business or other activities off premises, while driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment. Drug-related paraphernalia includes material and/or equipment designed for use in testing, packaging, storing, injecting, ingesting, inhaling or otherwise introducing illegal or unauthorized drugs into the body.

Permissive Use of Prescribed and Over-The-Counter Drugs. The legal use of prescribed medication taken according to a prescription legal in the State obtained in the employee's name and over-the-counter drugs is permitted while on City premises, while on duty, while conducting City-related business or other activities off premises, while

driving a City-owned or leased vehicle, or while operating or using other City-owned or leased property or equipment only if it does not impair an employee's ability to perform the essential functions of the job (or operate the vehicle, property or other equipment) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, drowsiness, dizziness, confusion, or feeling shaky.

The City of Burnet reserves the right at all times to judge the effect that a legal drug, including medications not requiring a prescription, may have upon an employee's work performance and to restrict the employee's work activity or presence at the workplace accordingly. The City also reserves the right to have a physician of its choice determine whether a medication at the prescribed or recommended dosage impairs or adversely affects the employee's work activity. For Police and Fire Department personnel, all prescription medication for must be reported to the Fire Chief or Police Chief.

Public Safety Department Employees. Certain Public Safety Department employees may be required to be in possession of alcohol and/or drugs in carrying out their job duties. Such employees will be exempted from certain portions of this policy under certain limited conditions. Additional guidelines may be established by Police and Fire Department operating procedures.

Mandatory Disclosure by Employees. Employees taking prescription medication and/or over-the-counter medication must report such use to the Human Resources Director if there is a reasonable likelihood the medication will impair the employee's ability to perform the essential functions of his or her job (or operate a vehicle, property or other equipment, if applicable) effectively and in a safe manner that does not endanger the employee, citizens or other individuals in the workplace. Examples of impairment include, but are not limited to, slurred speech, drowsiness, dizziness, confusion, or feeling shaky.

On-Call Employees. Employees scheduled to be on call are expected to be fit for duty upon reporting to work. Any employee scheduled to be on call, and is called out, is governed by this policy. Sometimes, an employee who is not scheduled to be on call may nevertheless be called out. If this or any other situation occurs where the employee called out is under the influence of alcohol or has a presence in the system of drugs, such that reporting to work would result in a violation of this policy, the employee must so advise the appropriate supervisor on duty. The employee shall not report to work.

Mandatory Reporting of Arrests and Convictions. Employees must notify the Human Resources Director, in writing, of any alcohol or drug-related arrest and/or convictions (including a plea of *nolo contendere*) or deferred adjudication, for a violation occurring off duty and/or in the workplace no later than twenty-four (24) hours after the arrest and/or conviction.

Off-Duty Conduct. The City may take disciplinary action, up to and including termination of employment, if an employee's off-duty use of or involvement with drugs or alcohol is damaging to the City's reputation or business, is inconsistent with the employee's job

duties, or when such off-duty use or involvement adversely affects the employee's job performance. Any employee reporting to work under the influence of illegal drugs or alcohol (.02 bac or higher) may be disciplined, up to and including termination.

Rehabilitation/Treatment.

It is the City's desire to assist employees who voluntarily request assistance with alcohol or drug dependency. For City support and assistance, however, an employee must acknowledge the problem and seek and accept counseling and/or rehabilitation before it impairs job performance and/or jeopardizes the employee's employment.

Employees with drug or alcohol problems that have not resulted in, and are not the immediate subject of, disciplinary action may request approval to take a leave of absence to participate in a rehabilitation or treatment program. (An employee may not enroll in a rehabilitation or treatment program in lieu of disciplinary action.) The leave of absence may be granted in the City's sole discretion. Factors considered by the City in deciding whether to grant leave include: the length of the employee's employment with the City; the employee's prior work and disciplinary history; the employee's agreement to abstain from the use of the problem substance and follow all other requirements of the rehabilitation/treatment program; the employee's compliance with City policies, rules, and prohibitions relating to conduct in the workplace; and the resulting hardship on the City due to the employee's absence.

The cost of any rehabilitation or treatment may be covered under the City's group health insurance policy. In any case, the employee is responsible for all costs associated with any rehabilitation or treatment program.

During time off for a City-approved rehabilitation or treatment program, the employee must use any available vacation leave, sick leave, compensatory time off, or other accrued paid leave time.

If the employee successfully completes the prescribed rehabilitation or treatment, the City will make reasonable efforts to return the employee to the prior position or one of similar pay and status. However, employment with the City following a City-approved leave for rehabilitation or treatment is conditioned on the following:

- Initial negative test for drugs and/or alcohol before returning to work.
- A written release to return to work from the rehabilitation or treatment facility/program.
- Periodic and timely confirmation of the employee's on-going cooperation and successful participation in any follow-up or ongoing counseling, testing, or other treatment required in connection with the City-approved rehabilitation or treatment program, if applicable.
- In addition to any testing required in connection with the employee's ongoing treatment or follow-up to treatment, all employees who participate in rehabilitation or treatment under this section will also be required to submit to periodic and/or

random testing by the City during the two years following the employee's return to work following treatment.

- The employee must sign a formal written agreement to abide by the above conditions, as well as any other conditions deemed appropriate by the City. The employee must meet with the Director of Human Resources to discuss the terms of continued employment and sign a formal agreement before returning to work.

Policy Violations. Violations of this policy will generally lead to disciplinary action, up to and including immediate termination of employment and/or required participation in a substance abuse rehabilitation or treatment program. The Police and Fire Departments may have stricter disciplinary rules regarding violation of this policy. Employees with questions or concerns about substance dependency or abuse are encouraged to discuss these matters with the Director of Human Resources to receive assistance or referrals to appropriate resources in the community.

TESTING

Types of Tests. Testing may include one or more of the following: urinalysis, hair testing, breathalyzer, Intoxilyzer, blood, or other generally accepted testing procedure.

Testing of Applicants.

All applicants to whom a conditional offer of employment has been made will be required to submit to testing for alcohol and illegal and unauthorized drugs. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of employment or future employment with the City.

Employees transferring to a new job within the City must undergo testing for alcohol and illegal and unauthorized drugs before the transfer. A positive test result, refusal to test, or attempts to alter or tamper with a sample or any other part of the test, will render the applicant ineligible for consideration of the transfer or future employment with the City.

Testing of Employees.

- If a delay in reporting to the testing facility is unjustified or unreasonable, the employee may be subject to corrective actions, up to and including immediate separation from employment.
- The City may conduct random testing on employees holding safety-sensitive positions.
- Police and Fire Department employees are also subject to any applicable Departmental rules and regulations regarding illegal and unauthorized drug and alcohol testing.
- Tests will be paid for by the City.
- To the extent possible, testing will normally be done during the employee's normal work time.

- Any employee who refuses to be tested, or who attempts to alter or tamper with a sample or any other part of the testing process, will be subject to disciplinary action up to and including termination.
- A positive test result is a violation of the City's Drug and Alcohol Use Policy and may result in disciplinary action up to and including termination of employment. Any employee who is terminated for violation of the City's Drug and Alcohol Use Policy is ineligible for future employment with the City.
- The City has additional obligations when testing for controlled substances and alcohol for those employees regulated by the U.S. Department of Transportation. See the City's Drug and Alcohol Policy for DOT Employees for additional information.

On-the-Job Incident/Accident Testing.

Where there is an "At-Fault" incident/accident causing a fatality, an injury to the employee or to another, significant property damage, involves unusual circumstances, or the driver is issued a moving traffic citation the employee must submit to a drug and alcohol test immediately after the incident/accident. "At-Fault" incidents/accidents will subject the employee to corrective disciplinary action, up to and including immediate separation from employment.

An employee subject to post-accident drug and alcohol testing should be tested as soon as possible following an incident/accident, no more than two (2) hours of the incident/accident if possible. Testing may be delayed for the employee to call for emergency assistance, render aid to others involved in the accident, or to receive medical attention for injuries resulting from the accident. If a drug and alcohol test is not administered within 2 hours of the incident/accident, the supervisor shall document the reasons why.

Use of Law Enforcement Tests. In post-accident situations, the City of Burnet reserves the option to substitute a breath alcohol test performed by local law enforcement officials, using procedures required by their jurisdictions, providing such test results are received directly from the local jurisdiction or the driver. If the City substitutes a breath alcohol test by law enforcement in lieu of other procedures described herein for a post-accident test, it may rely on and take appropriate action based on the results. An employee may elect to provide a blood sample under this section of the policy.

Random Testing.

All employees occupying safety-sensitive positions will be subject to random testing for drugs and/or alcohol. The Human Resources Department will maintain a list of safety-sensitive positions subject to testing and will manage the random testing process.

The random selection process will be completely objective and anonymous and will utilize a scientifically valid method such as random number table or computer-based random

number generator matched with employees' social security numbers, payroll identification numbers, facility number or other comparable identifying numbers. The test will be unannounced, and the dates for testing will be reasonably spread throughout the year. All employees in roles which may include safety-sensitive functions will have an equal chance of being tested at any time, regardless of the number of his/her previous selections.

Any employee notified of his/her selection for random alcohol and/controlled substances testing will be expected to proceed to the test site immediately.

Reasonable Cause Testing.

For purposes of this policy, reasonable suspicion is a belief based on articulable observations (e.g., observation of alcohol or drug use, apparent physical state of impairment, incoherent mental state, changes in personal behavior that are otherwise unexplainable, deteriorating work performance that is not attributable to other factors, a work-related accident or injury, evidence of possession of substances or objects which appear to be illegal or unauthorized drugs or drug paraphernalia) sufficient to lead a supervisor to suspect that the employee is under the influence of illegal or unauthorized drugs or alcohol. Supervisors who refer an employee for reasonable suspicion testing must document the specific factors that support reasonable suspicion testing (e.g., the who, what, when, where of the employee's behavior and other symptoms, statements from other employees or third parties, and other evidence supporting the reasonable suspicion testing). Testing should be arranged as soon as possible after the supervisor's articulable observations.

Testing Procedures.

- All testing must normally be authorized in advance by the employee's Department Director or the Director of Human Resources.
- All substance abuse testing will be performed by an approved laboratory or healthcare provider chosen by the City. All positive test results will be subject to confirmation testing.
- Test results will be maintained in a confidential file separate and apart from the employee's personnel file. Any medical-related information will be confidential and accessible only by the Director of Human Resources; supervisors and managers on a need to know basis, including those who have a need to know about necessary restrictions on the work or duties of an employee and any necessary accommodation; first aid and safety personnel when appropriate; government officials; insurance companies as may be necessary to provide health or life insurance to employees; by court order or as otherwise legally mandated; and as necessary to protect the interests of the City.

Exhibit A Proposed Policy

DRUG AND ALCOHOL POLICY FOR DOT EMPLOYEES (Revised 5-26-2020 Resolution 2020-**)

Employees/Applicants Subject to Testing. City employees who drive a commercial motor vehicle (CMV) requiring a Commercial Driver's License (CDL) as part of their job duties are subject to alcohol and drug testing as required by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration and as outlined in this policy. The employee's supervisor or the Director of Human Resources will advise the employee if the employee is subject to DOT testing and the terms of this policy. Employees who are not required by DOT to hold a CDL are not subject to this policy. Applicants for employment for a position requiring a CDL are also subject to testing under this policy.

Employees covered by this policy are also required to comply with the City's Drug and Alcohol Use Policy. In other words, this DOT Drug and Alcohol Policy is in addition to, not in lieu of, the provisions of the City's general Drug and Alcohol Use Policy. DOT tests will be separate from non-DOT tests in all respects. DOT tests take priority and will be conducted and completed before a non-DOT test is begun. All drug and alcohol testing performed under this DOT Policy will comply with applicable DOT procedures. If this policy conflicts with DOT regulations in any way, the DOT regulations will govern.

Employees who hold these jobs are required to carry their CDLs when they are at work or are operating City equipment.

Prohibited Alcohol Use.

On-duty and Pre-duty Use. Reporting for, or remaining on, duty requiring the performance of safety-sensitive functions is prohibited under the following conditions:

- While having a breath alcohol concentration of 0.04 or more as indicated via breath test;
- While using alcohol; or
- Within 4 hours after using alcohol.

Use Following an Accident. An employee required to take a post-accident alcohol test pursuant to this policy is prohibited from using alcohol for 8 hours following the accident, or until undergoing a post-accident alcohol test, whichever occurs first.

Prohibited Drug Use. Illicit use of drugs by safety sensitive drivers is prohibited both on and off duty. An employee may not report for duty or remain on duty when using or after use of any controlled substances, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a CMV. An employee may not report for duty, remain on duty or perform a safety sensitive function if the employee tests

positive for controlled substances or has adulterated or substituted a test specimen.

Required Alcohol and Drug Tests. DOT requires the following testing for covered drivers: pre-employment, post-accident, random, reasonable suspicion, return-to-duty and follow-up testing. Before conducting any required DOT testing, the City will notify the driver that the alcohol or drug test is required by DOT regulations.

Pre-employment Testing. Drug and alcohol tests will be conducted after a conditional offer of employment is made. These tests are also required when employees are promoted, demoted or transferred into a safety sensitive driver position.

Post-accident Testing. Drug and alcohol tests will be conducted after accidents in which the driver's performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation. Post-accident testing must be conducted as soon as practicable on all surviving drivers following an occurrence involving a CMV operating on a public road in commerce, as follows:

- When the employee is issued a moving traffic violation citation and one or more of the vehicles involved is disabled and must be towed from the scene.
- When the employee is issued a moving traffic violation citation and any person involved in the accident is injured to the extent that he/she requires and receives immediate medical treatment away from the scene of the accident. or
- In an accident involving a fatality, testing will be performed on anyone who was performing safety sensitive functions with respect to the vehicle.

An employee subject to post-accident testing must remain readily available for such testing or will be deemed by the City to have refused to test. Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary medical care.

In post-accident situations, the City may substitute a blood or breath alcohol test for a urine drug test, so long as the test is performed by state or local law enforcement officials using procedures required by their jurisdictions, provided such test results are received directly from the local jurisdiction or the driver. A positive post-accident test administered by law enforcement will result in the same action as a positive post-accident test performed at the City's behest.

- **Post-Accident Alcohol Testing.** If alcohol testing cannot be administered within 2 hours of one of the above listed occurrences, a written statement explaining why the alcohol test was not promptly administered must be provided to the Director of Human Resources by the appropriate supervisor. If alcohol testing cannot be administered within 8 hours after the occurrence, the City will cease attempts to administer an alcohol test and document the

reasons the alcohol test was not administered. This report must be promptly forwarded to the Director of Human Resources.

- **Post-Accident Drug Testing.** A driver will be drug tested as soon as practicable but not later than 32 hours after one of the above listed occurrences. If the driver is not drug tested within 32 hours, the appropriate supervisor must prepare a report documenting the reason why and promptly forward the report to the Director of Human Resources.

Reasonable Suspicion Testing. Reasonable suspicion drug and alcohol testing is conducted when a trained supervisor has reason to believe that an employee is in violation of this policy. The reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee; the observations may also include indications of the chronic and withdrawal effects of controlled substances. The supervisor must consult with the Department Director (or designee) and affirm the basis of the suspicion. If the Department Director concurs, the employee will be required to undergo testing only after consultation with the Director of Human Resources. A written report of the reasonable suspicion observations must be prepared by the supervisor(s) who made the observation within 24 hours of the observed behavior or before the results of tests are released, whichever is earlier. This report must be promptly forwarded to the Director of Human Resources.

- **Reasonable Suspicion Alcohol Testing.** Reasonable suspicion alcohol testing is permitted only if the reasonable suspicion observation is made during, just before, or just after, the period of the workday the employee is required to be in compliance with this policy. An employee may be directed to undergo reasonable suspicion testing only while the employee is performing, just before performing, or just after performing, safety sensitive functions. If alcohol testing cannot be administered within 2 hours after the reasonable suspicion observation, a written statement that explains why the alcohol test was not promptly administered must be given to the Director of Human Resources. If alcohol testing cannot be administered within 8 hours after the observation, the City will cease attempts to administer an alcohol test and the appropriate supervisor must immediately document the reasons that the alcohol test was not administered; this report must be promptly forwarded to the Director of Human Resources.

Notwithstanding the absence of a reasonable suspicion alcohol test under this policy, an employee may not report for duty or remain on duty requiring the performance of safety sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse. In such instances, the employee will not be permitted to perform or continue to perform safety sensitive functions until:

- An alcohol test measures the employee's alcohol concentration at less than 0.02; or
- 24 hours have elapsed since the reasonable suspicion observation was made.
- **Reasonable Suspicion Drug Testing.** A driver will be drug tested as soon as practicable but not later than 32 hours after the reasonable suspicion observation. If the driver is not drug tested within 32 hours, the appropriate supervisor must prepare a report documenting the reason why and promptly forward the report to the Director of Human Resources.

Random Testing. Drivers are selected for random, unannounced drug and alcohol testing using a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with the employee's Social Security number, payroll identification number, or other comparable identifying numbers. Each driver subject to this policy will have an equal chance of being tested each time random selections are made. The number of drivers randomly selected will be in accordance with applicable DOT regulations. Each driver randomly selected for testing will be tested during the selection period. Dates and times for random testing are unannounced and spread reasonably throughout the calendar year. Each driver selected for random testing must proceed to the test site immediately after notification; if, however, the driver is performing a safety-sensitive function, other than driving a CMV, at the time of notification, the City will instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. A driver will be randomly tested for alcohol just before, during, or just after performing, safety sensitive functions; random testing for drugs does not have to be conducted in immediate time proximity to performing safety sensitive functions.

- Performing a safety-sensitive function means an employee who is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform, just completed performing, or immediately available to perform any safety-sensitive functions.

Return-to-duty and Follow-up Testing. Return-to-duty tests are conducted when a driver who has violated DOT's prohibited drug and alcohol standards returns to performing safety sensitive duties. Follow-up tests are unannounced, and at least 6 tests must be conducted in the first 12 months after a driver returns to duty; follow-up tests may be extended for up to 60 months following a driver's return to duty. Drug tests must be negative and alcohol tests must demonstrate a breath alcohol level of less than 0.02. The driver will pay all costs associated with return-to-duty testing. When applicable, the City will follow all applicable DOT regulations in requiring return-to-duty and follow-up testing. The City is not, however, required to hire an applicant or continue the employment of a driver who has violated DOT drug and alcohol regulations, or this policy and it is the policy of the City not to do so. Thus, return-to-duty and follow-up tests are generally applicable only for those seeking assistance as set out below and, based on individual

circumstances, for those who may have had an alcohol concentration of 0.02 or greater, but less than 0.04.

Refusal to Test. An employee who refuses to be tested in any of the above circumstances, who obstructs the testing process, or who tampers/alters a specimen, will not be permitted to perform or continue to perform safety sensitive functions and will likely be terminated. An applicant who does one of these prohibited acts will not be hired. Except in the case of pre-employment testing, a refusal to test includes the failure to appear for testing within a reasonable time, as well as failure to remain at the testing site until the testing process is complete. Failure to test also includes the failure to provide the required sample with no adequate medical explanation, and the failure to cooperate with any part of the testing process (e.g., refusing to empty pockets when asked to do so, behaving in a confrontational way that disrupts the collection process, or failure to undergo a medical exam or evaluation as directed by the physician medical review officer (MRO) as part of the verification process).

Additional Information About Alcohol Testing.

- a. **Consequences of a Positive Alcohol Test.** An employee who is tested and has an alcohol concentration of 0.04 or greater will be removed from safety sensitive functions and may be terminated. An employee who is tested and has an alcohol concentration of .02 to .039 will not be permitted to perform safety sensitive functions for a minimum of 24 hours and will be disciplined, up to and including termination. If not terminated, then the employee will receive a mandatory referral to a substance abuse professional. Any non-compliance with the treatment recommendations of the substance abuse professional will result in disciplinary action, up to and including termination. (The employee will be placed on administrative leave without pay during the treatment period. That employee may use accrued sick leave during the treatment period.)
- b. **Alcohol Testing Procedures.** A trained breath alcohol technician will conduct alcohol tests. If the alcohol concentration is 0.02 or greater, a second confirmation test will be conducted in accordance with DOT regulations, the results of which will determine any actions taken. Any result of less than 0.02 alcohol concentration is considered a "negative" test. The second, confirmation test results determine if the employee is in violation of this policy. Testing procedures that ensure accuracy, reliability and confidentiality of test results will be followed pursuant to DOT regulations.

Additional Information About Drug Testing.

- a. **Drug Testing Procedures.** Drug testing is conducted by analyzing a driver's urine specimen at a lab certified by the U.S. Department of Health and Human Services. The driver provides a specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain of custody document, and prepares the specimen and accompanying paperwork for shipment to a drug-

testing lab. "Split" urine specimens provide drivers with an opportunity for a second test, if needed. If the driver challenges the validity of the test, then the employee has 72 hours to request that the split specimen be sent for testing to another certified lab approved by the City's Director of Human Resources. The second test will be at the driver's own expense.

b. Drugs Tested For. DOT requires testing for the following drugs:

- Marijuana (THC)
- Cocaine
- Amphetamines
- Opiates
- Phencyclidine (PCP)

A screening test is performed first. If it is positive for one or more of these drugs, then a confirmation test is performed. Whenever the terms "drug," "drugs" or "controlled substances" are used in this policy, they refer to the substances listed above. The City will not test for any other substances under this policy. The City may, however, test for other controlled substances pursuant to its general Drug and Alcohol Use Policy.

c. Review of Drug Test Results. All positive drug test results are reviewed and interpreted by a physician medical review officer (MRO) before they are reported to the City. If the lab reports a positive result to the MRO, the MRO will contact the driver (either in person or by phone) and will conduct an interview to determine if there is an alternative medical explanation for the drug(s) found in the driver's urine specimen. If the driver provides appropriate documentation and the MRO determines that it is a legitimate medical use of the prohibited drug(s), the drug test result is reported as a negative to the City.

d. Consequences of a Positive Drug Test. A driver will be removed from safety sensitive duties and placed on administrative leave if the test returns a positive for drugs. The removal cannot take place until the MRO has interviewed the driver and determined that the positive test resulted from the unauthorized use of a controlled substance. A confirmed positive drug result will result in termination of employment.

Confidentiality. Test results may be released only to the driver, designated City officials, a substance abuse professional, laboratory officials or a medical review officer. Records will also be made available to a subsequent employer or other identified person upon the driver's specific written request. Test results will not be released to others except as required by law or expressly authorized in the applicable DOT regulations (e.g., the decision maker in a lawsuit, appeal or administrative proceeding initiated by or on behalf of the driver and arising from a positive DOT drug or alcohol test or refusal to test; this includes workers' compensation and unemployment proceedings.) All test results will be kept in a confidential file by the Director of Human Resources. Management and supervisory personnel who are authorized to have access to alcohol and drug testing

results must maintain complete confidentiality regarding this information. City employees who make a reasonable suspicion observation or who witness an accident must also maintain confidentiality. Breach of confidentiality relating to test results, or any other related matters, will likely result in disciplinary action, up to and including termination of employment.

Information from Prior Employers. The City will comply with the requirements of the FMCSA Clearinghouse regulations to obtain information from previous employers regarding alcohol test results of 0.04 or greater, verified positive drug test results, refusals to test (including verified adulterated or substituted drug test results), and any other violation of DOT drug and alcohol testing regulations within the statutory requirements of the driver's application, promotion or transfer. Affected individuals must also comply with the FMCSA clearinghouse requirements. If the City receives any such information about an applicant-driver, the applicant will not be hired; if such information is received about an employee seeking promotion or transfer, the employee will not be promoted or transferred to the driver position and may also receive disciplinary action, up to and including termination of employment. The City will maintain a written, confidential record of the information it obtains and/or the good faith efforts it made to obtain the information. This information will be retained for a minimum of 3 years. The City will also ask if the person has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the driver applied for, but did not obtain, safety sensitive transportation work covered by a DOT agency drug and alcohol testing rules during the past 2 years. If the person admits to such conduct, the person will not be allowed to perform safety sensitive functions for the City. If the driver refuses to provide the City with the required written consent, the driver will not be permitted to perform safety sensitive functions and will likely be disciplined (up to and including termination of employment) if employed, or not hired if applying for employment.

Record Retention. The City will maintain and retain records under this policy as mandated by DOT regulations.

Notification to Applicants/Employees of Positive Test Results. The City will notify applicants of the results of a pre-employment drug test if the applicant requests such results within sixty calendar days of being notified of the disposition of the employment application. The City will notify an employee of the results of random, reasonable suspicion and post-accident drug tests if the test results are confirmed positive, and also which controlled substance(s) verified positive after the MRO confirms the positive. The City will also make reasonable efforts to contact and request each driver who tested positive to contact and discuss the results of their drug test with an MRO who has been unable to contact the driver. The City will immediately notify the MRO that the driver has been notified to contact the MRO within seventy-two hours.

Employee Admission of Drug/Alcohol Use. An employee who admits to alcohol misuse or drug use must do so in accordance with the City's general Drug and Alcohol Use Policy; provided, however, the employee may not self-identify in order to avoid the testing requirements of this DOT policy. Further, the employee must make the admission

prior to performing a safety sensitive function, i.e., prior to reporting for duty. The employee may not perform a safety sensitive function until the City is satisfied that the employee has been evaluated and has successfully completed educational or treatment requirements in accordance with the City's general Drug and Alcohol Use Policy. A drug and alcohol abuse evaluation expert, i.e., an EAP professional, a substance abuse professional or a qualified drug and alcohol counselor, will determine successful completion. Prior to the employee performing safety sensitive functions, the employee must undergo a return to duty alcohol test with a result of less than 0.02 and/or a return to duty drug test with a negative test result.

Safety Sensitive Functions. For purposes of this policy, safety sensitive function or duty means all the time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. Safety sensitive functions/duties include:

- All time at a City, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City.
- All time inspecting equipment as required by applicable DOT regulations or otherwise inspecting, servicing, or conditioning any CMV at any time.
- All time spent at the driving controls of a CMV in operation.
- All time, other than driving time, in or upon any CMV.
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Transportation to Testing Site. Except for pre-employment and random testing, employees will be driven to the testing facility by a supervisor. The supervisor will remain with the employee during the testing process. The City will make arrangements to have the employee transported back to the City or home, as appropriate, after the testing is complete.